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No. 82-1675

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

STATE OF CALIFORNIA,

Petitioner,

—against—

UNITED STATES OF AMERICA,
MARTIN G. ROCK and IRENE E. ROCK,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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In 1973 the United States joined and served California as a necessary party defendant to this case because of her sovereign interest in the bed of the Colorado River. Now, 10 years later, the United States contends in its Memorandum in Opposition, that State's sovereign claims are irrelevant and not necessary to determine. It is too late for the United States to change its position. To leave the issues raised by the joinder of California unresolved would not only result in an enormous waste of time and money; it would make a mockery of the federal court system.

The United States is asking this court to ignore the

central factual issue litigated in this case. That issue was the location of the common boundary between the uplands and the riverbed. Indeed, California was joined as a necessary party by the United States to locate and resolve this boundary and to establish the rights of the parties with respect to the uplands and the riverbed.

Despite these facts the United States now argues that: "This case involves only the question of the ownership of a specific parcel of land to which the Rocks and the United States laid claim." (Opp. p. 3.)[1] This contention is wrong.

This case involves two parcels of land, not one. The uplands were claimed by the United States in their complaint; the riverbed was claimed by California in its Answer and Cross-claim. The Rocks claimed portions of both the riverbed and the uplands. Because of the allegations of the Rocks it was necessary to join California as a party and to specifically determine the common boundary between the uplands and the riverbed. This issue was litigated and established by the District Court in its findings. California is merely requesting that these findings be reflected in the judgment.[2]

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[1] The following abbreviations will be used in this Reply Brief:
1. Pet.—California's Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
2. Opp.—Memorandum for the United States in Opposition.

[2] The United States implies that because this issue was raised by way of an affirmative defense instead of a counterclaim, it need not be decided. (Opp. p. 4, fn. 4.) A counter-claim was not filed against the United States because it did not dispute California's claim to the riverbed. Any disagreement between the United States and California as to the boundary between the uplands was put in issue by the affirmative defenses and was in fact litigated. In any event, if California had mistakenly designated a counter-claim as an affirmative defense, it should be treated as if there had been a proper designation. (Federal Rule of Civil

In contrast the United States is pretending as though the boundary between the uplands and the riverbed was never adjudicated. The United States claims that it was "not necessary" to adjudicate the boundary between the state and federal property because it was determined that the boundary was not within the upland parcel. (Opp. p. 3, fn. 2.) Not only is this statement fallacious, its illogic is manifest. It is impossible to conclude that the boundary is not within the uplands until the location of that boundary is established.

In addition, until the boundary is determined it is incorrect to describe the uplands as a "specific parcel." The upland parcels were described in the United States Complaint and the District Court's Judgment as follows:

> Lots 3, 4 and the Northwest One-Quarter of the Northwest One-Quarter of Section 36, Township 2 North, Range 26 East, S.B.M. together with any accretions thereto. (See Pet. App. G and E.)

This description was inadequate because it did not indicate the location of the bed of the Colorado River, the waterward boundary of the uplands. To retreat to this description at this point would distort the entire focus of this case.

Finally, the United States should be precluded from contesting California's request for a judgment. Not only did the United States join California as a defendant party, a judgment in California's favor would not affect that aspect of the judgment already rendered in favor of the United States. Indeed the District Court, in its find-

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Procedure 8c, 28 USCA.)

ings, adopted the position of the United States when it established the location of the boundary between the uplands and the riverbed. (Pet. App. D.) This determination is necesssary to a final judgment on both the United States' Complaint and California's Answer and Cross-claim. California *is not* contesting this factual finding. California *is* requesting a judgment based on this determination.

The perfunctory opposition presented by the United States is not sufficient to cure the procedural deficiencies in this case. The District Court rendered an incomplete judgment which was sanctioned by the Circuit Court. These deficiencies were outlined in detail in California's Petition. They have not been addressed by any of the respondents.[3] The importance and substantiality of the questions presented have not been denied. This ineffectual response emphasizes the need for the exercise of this Court's power of supervision to resolve these issues.

For the foregoing reasons, and for the reasons outlined in California's petition, it is requested that California's Petition for Writ of Certiorari be granted. In fact, in light of the nominal opposition presented by the respondents, petitioner suggests that this case can be handled by way of summary action. All that is needed is a directive to the lower federal courts to modify the judg-

[3] The other respondents in this case, Mr. and Mrs. Rock, have decided not to file a Memorandum in Opposition to California's Petition. (See letter to the Clerk of the Supreme Court from Mr. and Mrs. Rock's attorney dated May 13, 1983.)

ment to include a paragraph locating and establishing California's sovereign rights to the riverbed consistent with the findings of the District Court.

DATED: May 26, 1983.

Respectfully submitted,

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